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9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION  
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15 RAQUEL GARCIA, ) CV 14-00796-SH  
16 )  
17 Plaintiff, ) MEMORANDUM DECISION  
18 v. ) AND ORDER  
19 )  
20 CAROLYN W. COLVIN, Commissioner, )  
Social Security Administration, )  
Defendant. )

21 This matter is before the Court for review of the Decision of the  
22 Commissioner of Social Security denying Plaintiff's application for Disability  
23 Insurance Benefits. Pursuant to 28 U.S.C. § 636(c), the parties have consented  
24 that the case may be handled by the undersigned. The action arises under 42  
25 U.S.C. § 405(g), which authorizes the Court to enter Judgment upon the  
26 pleadings and transcript of the record before the Commissioner. Plaintiff and  
27 Defendant have filed their pleadings, Defendant has filed the certified transcript  
28 of record, and each party has filed its supporting brief. After reviewing the

1 matter, the Court concludes the Decision of the Commissioner should be  
2 affirmed.

### 3 **I. BACKGROUND**

4 Plaintiff, Raquel Garcia, applied for Disability Insurance Benefits on July  
5 22, 2011. (AR 66). Plaintiff alleges disability commencing February 24, 2011.  
6 (AR 10, 12). The Commissioner denied the Application initially. (AR 88-92).  
7 A hearing on the claim was conducted on October 25, 2012. (AR 28-65). On  
8 December 4, 2012, the Administrative Law Judge (“ALJ”) issued an unfavorable  
9 decision. (AR 7-27). The Appeals Council denied the request for review. (AR  
10 1-4). Plaintiff commenced this civil action seeking judicial review.

### 11 **II. DISCUSSION**

#### 12 **A. The ALJ Properly Considered the Treating Physician’s** 13 **Findings Regarding Plaintiff’s Physical Residual Functional** 14 **Capacity**

15 Plaintiff argues that the ALJ failed to properly consider the physical  
16 residual functional capacity assessed by Plaintiff’s treating physician, Dr. Brian  
17 Nguyen.<sup>1</sup> Defendant responds that the ALJ provided substantial evidence for  
18 giving little weight to Dr. Nguyen’s medical opinion.

19 At the hearing, the Plaintiff testified she was unable to work due to  
20 symptoms associated with fibromyalgia, back pain, neck pain, right shoulder  
21 pain, diabetes, and depression. (AR 15).

22 The ALJ found Plaintiff has the following severe medical impairments:  
23 fibromyalgia, mild degenerative disc disease of the lumbar spine, mild  
24 degenerative disc disease of the cervical spine; degenerative joint disease of the  
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26  
27 <sup>1</sup> Dr. Nguyen also submitted a statement of mental limitations which the ALJ similarly gave  
28 “little weight.” (AR 20-21; 342-43). This Decision is limited to the sole issue raised in  
Plaintiff’s brief, whether the ALJ properly considered Dr. Nguyen’s opinion of physical  
limitations. Pl. Br. 2.

1 right shoulder, insulin dependent diabetes mellitus, and depression. (AR 12).

2 The ALJ determined that Plaintiff has the residual functional capacity (“RFC”) to  
3 perform a range of light work as defined in 20 C.F.R. § 404.1567(b) (lifting up to  
4 20 pounds occasionally, with 10 pounds frequently and walking and/or standing  
5 for up to 6 hours a day). (AR 14). Further the ALJ found: Plaintiff can never  
6 climb ladders, ropes, or scaffolds, but can occasionally climb ramps and stairs;  
7 she can occasionally balance, stoop, kneel, crouch, and crawl; she can frequently  
8 handle and finger bilaterally; she can occasionally do overhead reaching; she is  
9 limited to occasional exposure to temperature extremes of hot and cold; she can  
10 have no to rare exposure to unprotected heights and she is limited to  
11 remembering and carrying out unskilled work. (AR 14).

12 In assessing Plaintiff’s RFC the ALJ gave “little weight” to Dr. Nguyen’s  
13 opinion that Plaintiff can perform less than a light range of work. (AR 20). In a  
14 form entitled “Medical Opinion Re: Ability to do Work-Related Activities  
15 (Physical)” dated June 18, 2012, Dr. Nguyen stated the following limitations:  
16 Plaintiff has the maximum ability to lift and carry 10 pounds during an 8-hour  
17 work day; can stand and walk less than 2 hours during an 8-hour work day; can  
18 sit for 5 minutes before changing position; can stand for 5 minutes before  
19 changing position; must walk about every 10 minutes for about 15 minutes each  
20 time; needs the opportunity to shift at will from sitting or standing/walking; may  
21 need to lie down at unpredictable intervals during a work shift every 5-15  
22 minutes; can occasionally twist, stoop, crouch, climb stairs, and climb ladders;  
23 should avoid concentrated exposure to extreme cold, humidity, and hazards  
24 (machinery, heights, etc.) and should avoid moderate exposure to extreme heat,  
25 fumes, order, dusts, gases, and poor ventilation. (AR 345-47). Dr. Nguyen also  
26 indicated that on average Plaintiff’s impairments and treatments would cause her  
27 to be absent from work no more than three times a month. (AR 347).

1 Although a treating physician's opinion is generally afforded the greatest  
2 weight in disability cases, it is not binding on an ALJ with respect to the  
3 existence of an impairment or the ultimate determination of disability. Batson v.  
4 Comm'r., 359 F.3d 1190, 1195 (9th Cir. 2004). The weight given a treating  
5 physician's opinion depends on whether it is supported by sufficient medical  
6 data and is consistent with other evidence in the record. 20 C.F.R. § 416.927(b)-  
7 (d). The ALJ may disregard the treating physician's opinion whether or not that  
8 opinion is contradicted." Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir.  
9 1989). Where the treating doctor's opinion is not contradicted by another doctor,  
10 it may be rejected only for "clear and convincing" reasons. Lester v. Chater, 81  
11 F.3d 821, 830 (9th Cir. 1995)(as amended). If the treating doctor's opinion is  
12 contradicted by another doctor, the ALJ must provide "specific and legitimate  
13 reasons" for rejecting the treating physician's opinion. Orn v. Astrue, 495 F.3d  
14 625, 632 (9th Cir., 2007).

15 Additionally, where evidence is susceptible to more than one rational  
16 interpretation, it is the ALJ's conclusion that must be upheld. Burch v. Barnhart,  
17 400 F.3d 676, 679 (9th Cir 2005). "The key question is not whether there is  
18 substantial evidence to support a finding of disability, but whether there is  
19 substantial evidence to support the Commissioner's actual finding that the  
20 claimant is not disabled." Jamerson v. Chater, 112 F.3d 1064, 1067 (9th Cir.  
21 1997). "Substantial evidence is more than a scintilla but less than a  
22 preponderance—it is such relevant evidence that a reasonable mind might accept  
23 as adequate to support the conclusion." Orteza v. Shalala, 50 F.3d 748, 749 (9th  
24 Cir.1995).

25 Here, the ALJ provided the following specific and legitimate reasons,  
26 supported by substantial evidence, for giving little weight to Dr. Nguyen's  
27 medical opinion of functional limitations: (1) Dr. Nguyen's assessment that  
28 Plaintiff's functional limitatio preclude her from working at a level of substantial

1 gainful activity is an issue reserved to the Commissioner; (2) Dr. Nguyen's  
2 opinion is not supported by the objective medical evidence; and (3) Dr.  
3 Nguyen's opinion is inconsistent with his own treatment notes. (AR 20).

4 Firstly, the ALJ stated that Dr. Nguyen's opinion on an issue reserved to  
5 the Commissioner was not entitled, "Dr. Nguyen assessed functional limitations that  
6 would preclude the [Plaintiff] from working at the level of substantial gainful  
7 activity. As an opinion on an issue reserved to the Commissioner, this statement  
8 is not entitled to controlling weight and is not given special significance,  
9 pursuant to 20 C.F.R. § 404.1527[d] and SSE 96-5." (AR 20).

10 Plaintiff argues this indicates the ALJ improperly "rejected" the treating  
11 physician's opinion. Pl. Br. 5. However, the statute is clear, "[O]pinions on  
12 issues reserved to the Commissioner [are not medical opinions] because they are  
13 administrative findings that are dispositive of a case; *i.e.*, that would direct the  
14 determination or decision of disability." 20 C.F.R. § 404.1527(d)(1). "Although  
15 we consider opinions from medical sources on issues such as...your residual  
16 functional capacity... the final responsibility for deciding these issues is reserved  
17 to the Commissioner." 20 C.F.R. § 404.1527(d)(2). The ALJ "will not give any  
18 special significance to the source of an opinion on issues reserved to the  
19 Commissioner." 20 C.F.R. § 404.1527(d)(3). Furthermore, SSR 96-5 states,  
20 "[T]reating source opinions on issues that are reserved to the Commissioner are  
21 never entitled to controlling weight or special significance." SSR 96-5.

22 A review of the Decision shows that the ALJ did not simply ignore Dr.  
23 Nguyen's opinion. Rather, the ALJ clearly states that Dr. Nguyen's assessment  
24 is neither binding nor dispositive on the issue of disability and in addition to  
25 other reasons, further discussed below, the ALJ decided to give it "little weight."  
26 (AR 20). Therefore, in regards to the final determination of RFC, the ALJ  
27 correctly reasoned that the Dr. Nguyen's opinion of disability was not entitled to  
28 controlling weight nor given special significance.

1 Secondly, the ALJ gave little weight to Dr. Nguyen's opinion because the  
2 diagnostic tests in the record showed minimal positive findings or were normal.  
3 (AR 20). In the "Medical Opinion Re: Ability to do Work-Related Activities  
4 (Physical)", Dr. Nguyen identified "MRI- C spine, MRI- L spine, and Nerve  
5 Conductive Studies" as the medical findings to support the functional limitations  
6 identified. (AR 346). However, the ALJ provided a detailed summary of the  
7 entire medical record and determined the findings from objective diagnostic tests  
8 (including the MRI and Nerve Studies) and treatment records did not support the  
9 level of functional limitations identified by Dr. Nguyen. (AR 15-21). See  
10 Matney v. Sullivan, 981 F.2d 1016, 1019 (9<sup>th</sup> Cir. 1992) (An ALJ need not accept  
11 an opinion if it is inadequately supported by clinical findings).

12 In regards to Plaintiff's fibromyalgia, the physical examinations by Dr.  
13 Nguyen revealed muscle ache and pain, muscle spasm, decreased range and  
14 tenderness to palpitation. (AR 262, 264). Nonetheless, Plaintiff received routine  
15 and conservative treatment consisting of prescription medication, Tordal  
16 injections (a nonsteroidal anti-inflammatory drug), hormone replacement  
17 therapy, and a gluten free diet. (AR 2558-81, 353, 357-58). In addition to her  
18 conservative treatments, many of the diagnostic tests performed by Dr. Nguyen  
19 did not yield any significant results. Plaintiff's February 2011 MRI of the brain  
20 was normal. (AR 254). A November 2011 dexta bone density test of the hip and  
21 spine yielded normal results. (AR 248). The April 2012 x-rays of the bilateral  
22 hip and pelvis, right clavicle, and thoracic spine were normal. (AR365-67).  
23 Additionally, the June 2012 Nerve Conductive Studies showed normal results.  
24 (AR 20, 350).

25 The ALJ also addressed the records for Plaintiff's right shoulder, neck and  
26 back pain, including any positive findings from objective diagnostic tests. An  
27 April 2012 x-ray of Plaintiff's right shoulder indicated degenerative joint disease  
28 of the right shoulder. (AR 17; 363). The March 2011 MRI of the cervical spine

1 revealed degenerative disc disease associated with congenitally short pedicles  
2 causing trace spinal stenosis (but no neural foraminal narrowing). (AR 17, 252-  
3 53). Additionally, a June 2012 MRI of the lumbar spine showed disc disease and  
4 facet disease at L4-L5 causing only minimal neural foraminal narrowing and  
5 mild disc and facet disease at L3-L4 and L5-S1. (AR 17, 361-362).

6 The ALJ found that the positive findings were “minimal” based on  
7 Plaintiff’s routine and conservative treatment of physical therapy, pain injections  
8 (later discontinued), and pain medication. (AR 261, 264-67, 271, 274). Further,  
9 Plaintiff’s November 2011 dexta bone density test of the spine yielded normal  
10 results. (AR 248). In addition, the April 2012 x-rays show minimal  
11 degenerative change in lumbar spine, and x-rays of the right clavicle and  
12 thoracic spine were normal. (AR 365-66).

13 Regarding Plaintiff’s diabetes mellitus, type 2, the ALJ noted Plaintiff’s  
14 treatment was conservative consisting of prescription medication and insulin.  
15 (AR 18, 256, 260, 263, 272, 276). Plaintiff was referred by Dr. Nguyen to an  
16 endocrine consultation with Dr. Bill Jou on June 11, 2010. (AR 18, 336-338).  
17 The evaluation indicated that Plaintiff did not comply with her diabetes  
18 management, including “not injecting her insulin consistently and skipping her  
19 shot when her sugars were low.” (AR 18, 336). In addition, the physical  
20 examination revealed negative diabetic foot examination and a normal  
21 neurological examination. (AR 18, 338). Moreover, although Plaintiff  
22 complained of tingling and numbness on May 12, 2012, Dr. Nguyen wrote that  
23 Plaintiff’s sugars were “more controlled” and “everything keeps showing up  
24 normal in her blood work.” (AR 18, 354). The ALJ also considered the June 12,  
25 2012 treatment note where Dr. Nguyen noted, under numbness and tingling, the  
26 “MRI of the neck did not show anything to correlate with her [symptoms]” and  
27 “not sure what else could be causing the symptoms.” (AR 18, 353).

1 Based on the ALJ's thorough examination of the entire medical record, the  
2 ALJ did not selectively review the treating records. Here, the ALJ provided  
3 substantial evidence to find that Dr. Nguyen's opinion of physical residual  
4 functional capacity was not supported by the objective medical evidence.

5 Lastly, the ALJ gave only "little weight" to Dr. Nguyen's opinion because  
6 the opinion was inconsistent with his own treatment notes. (AR 20). In  
7 Valentine v. Commissioner, the court found that a contradiction between the  
8 treating physician's opinion and treatment notes constitutes a specific and  
9 legitimate reason, support by substantial evidence, for discounting that opinion.  
10 574 F.3d 685, (9th Cir. 2009). In Valentine, the ALJ identified inconsistency  
11 with the treating psychologist's opinion (that the claimant was unemployable  
12 while acknowledging he was continuing to work full-time) and the treating  
13 psychologist's own treatment progress reports that showed claimant's improved  
14 functioning at work and encouraging comments he received from company  
15 officials. 574 F.3d 685, 692-93 (9th Cir. 2009).

16 Similarly, Dr. Nguyen cites to the MRI and Nerve Conductive Studies as  
17 the medical findings supporting his opinion of Plaintiff's functional limitation.  
18 However, the ALJ identified statements by Dr. Nguyen in his treatment notes that  
19 indicates he could not explain the Plaintiff's symptoms based on the objective  
20 medical findings. On May 12, 2012, under fibromyalgia, Dr. Nguyen wrote "I  
21 am wondering if the location she lives is playing a role in her medical condition  
22 since nothing is showing up positive of explaining her symptoms." (AR 355).  
23 On June 12, 2012, regarding Plaintiff's complaints of numbness and tingling, he  
24 wrote "MRI of neck is not showing anything significant to correlate with her  
25 [symptoms]. Not sure what else could be causing her [symptoms]." (AR 353).  
26 In addition, the interpretation and conclusion of Plaintiff's Nerve Conductive  
27 Studies states "normal study." (AR 350). Therefore, the ALJ properly afforded  
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1 Dr. Nguyen's findings little weight due to the contradiction between his opinion  
2 and treatment notes.

3 Furthermore, even if Plaintiff can present another reasonable interpretation  
4 of the evidence the ALJ's reasonable interpretation of the evidence will be  
5 upheld. Burch v. Barnhart, 400 F.3d 676, 679 (9<sup>th</sup> Cir 2005). "Even when the  
6 evidence is susceptible to more than one rational interpretation, we must uphold  
7 the ALJ's findings if they are supported by inference reasonably drawn from the  
8 record." Molina v. Astrue, 674 F.3d 1104, 1111 (9<sup>th</sup> Cir. 2012). Accordingly, the  
9 ALJ provided specific and legitimate reasons, supported by substantial evidence,  
10 for giving the treating physician's opinion little weight.

11 **ORDER**

12 The Court finds the ALJ properly considered the opinion of Dr. Nguyen,  
13 Plaintiff's treating physician. For the foregoing reasons, the decision of the  
14 Commissioner is affirmed and the Complaint is dismissed.

15 DATED: December 1, 2014

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19 STEPHEN J. HILLMAN

20 UNITED STATES MAGISTRATE JUDGE  
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